

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2017-093-10000A

**Laddie and Beverly Nimerichter,**

Appellants,

vs.

**Wayne County Board of Review,**

Appellee.

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**Introduction**

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 29, 2018. Laddie and Beverly Nimerichter were self-represented. County Assessor Brandon Carpenter represented the Board of Review.

The Nimerichters own twenty agricultural parcels located in Wayne County, Iowa. For ease of discussion, each parcel has been assigned a reference number. The parcels' January 1, 2017 assessments were set as follows:

Ref No.	Parcel No.	Acres	Assessed Value
1	130C04200001	19.99	\$ 14,730
2	130C04200003	20.00	\$ 13,070
3	090P33100002	40.00	\$ 29,880
4	090P33100004	40.01	\$ 17,040
5	090P33200001	40.00	\$ 24,950
6	090P33200002	34.99	\$ 19,400
7	090P33200003	39.99	\$ 27,960
8	090P33200004	34.02	\$ 22,180
9	090P33400001	40.01	\$ 17,970
10	090P33400002	36.00	\$ 22,780
11	090P33400003	35.98	\$ 76,260
12	090P33400004	38.02	\$ 24,440
13	090Q27300008	37.99	\$ 22,120
14	090Q34100002	40.03	\$ 27,070
15	090Q34100003	36.76	\$ 21,670

Ref No.	Parcel No.	Acres	Assessed Value
16	090Q34100004	39.99	\$ 29,720
17	090Q34300001	34.25	\$ 27,270
18	090Q34300003	20.70	\$ 17,950
19	090Q34300004	29.71	\$ 23,030
20	090Q34300002	20.00	\$ 13,040
<b>Totals:</b>		<b>678.44</b>	<b>\$ 492,530</b>

Each parcels' total assessed value was allocated entirely to land value except for Parcel 11. For this parcel the assessed value was allocated as \$26,470 to land value, \$40,880 to dwelling value and \$8910 to building value. (Ex. A).

The Nimerichters petitioned the Board of Review claiming the assessments were not equitable as compared to the assessments of other like property, the parcels were assessed for more than the value authorized by law, the parcels are misclassified, there are errors in the assessments, and there is fraud in the assessments under Iowa Code sections 441.37(1)(a)(1)(a-e). The Board of Review denied their petition. The Nimerichters reassert their claims to PAAB.

### **General Principles of Assessment Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2017). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a

preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

### **Findings of Fact**

Of the subject parcels' 678.44 acres, 506.31 acres are designated cropland and 172.13 acres are designated as non-cropland. Parcel 11 is the only parcel with improvements, which includes a one-story home built in 1890 with a 1982 addition as well as various agricultural buildings. (Ex. A).

Mr. Nimerichter stated his farm is located approximately three miles from the Iowa-Missouri border, and the land is more akin to that found in Missouri than Iowa's typical level slopes and deep rich soils. Mr. Nimerichter explained they have a cattle ranch with great grassland for grazing their livestock, which they have been continuously doing for twenty-seven years. He testified that they have never grown row crops, and do not own the machinery necessary to do so. He asserts their land is not suitable for row cropping and if they attempt to plow it they will be left with only clay, which will not grow anything.

Mr. Nimerichter expressed frustration due to an alleged dramatic increase in the productivity of one of his soils, arguing it is the same soil as it was before, noting nothing has changed. He believes the CSR2 is neither fair nor just for cattle producers who cannot benefit from the CRP subsidies received by row crop producers.

Ms. Nimerichter testified that she is an FSA retiree and noted the soils in the area are highly erodible and not suitable for row cropping. She stated that any tilling will cause what little top soil exists to run downhill into the rivers and streams. She noted they have only two inches of top soil at the most. Plus they believe the water quality folks will be after them if they were to till it because of chemical runoff.

Mr. Nimerichter testified that Julie Roisen, the Iowa Department of Revenue (IDR) Property Tax Administrator, and Kay Middlebrook, the former Wayne County Assessor, toured their entire farm. He recalled Ms. Roisen exclaiming "Holly Molly [sic] this is not row crop ground," and repeatedly telling Ms. Middlebrook to change their land from cropland to non-cropland because it is too steep for row cropping. They both

suggested he put his land in the Conservation Reserve Program (CRP). He spoke with USDA Farm Service Agency (FSA) personnel who informed him there is no way he could get this land into the CRP program. The program is limited to those who have a history of row cropping unsuitable ground after 2002 with crops planted at least four of the years between 2007 and 2013. Since they have never plowed their land, they are not eligible to participate.

The Nimerichters also submitted a written attachment to their Petition and Appeal explaining their position. Essentially, they believe the government is telling them how to use their land, by designating it as cropland when is not suitable for such use. They further assert the value of Wayne County land does not compare with land in Central and Northern Iowa that is conducive to growing row crops. They also claimed their land is misclassified as cropland when it is non-cropland, and there is an error in their assessment because their land is too steep to row crop. Finally, they assert the soil maps are not an accurate reflection of what exists. They contend no one knows exactly what type and how big of an area there is for any given soil type. It's a guesstimate at best. (Petition Attachment).

Mr. Carpenter, the current County Assessor, stated Wayne County adopted CSR2 in 2015, and at the time no one questioned anything until property taxes came due in 2016. He clarified that his office sets assessed values not taxes.

Mr. Carpenter explained that the agricultural land assessment methodology was applied uniformly throughout the county, no exceptions were made. He noted everything has been priced the same regardless of whether anyone thinks it is right or wrong. The rate per CSR2 point used in calculating the Nimerichters' assessed land value is \$18.04.

Mr. Carpenter stated the number of acres designated as row crop on the Nimerichters' land is accurate. He believes IDR directives require everything to be designated as cropland except trees, non-crossable waterways or bodies of water. Under these directives, he thinks a steep hill is still to be considered crop able, though he acknowledged he would not till the Nimerichters' land either.

In designating cropland and non-cropland, Mr. Carpenter stated he was instructed to start with the 2008 NRCS maps and then fine-tuned them based on changes. It is unclear whether he was referring to changes in assessment methodology and directives or in the land itself.

Carpenter further noted the Nimerichters' land is steep, but believes its CSR2 ratings are so low no benefit will be realized if their land is classified non-cropland.

### **Analysis & Conclusions of Law**

The Nimerichters raised every ground under section 441.37(1)(a) on appeal.

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). The Nimerichters offered no evidence the Assessor applied an assessment method in a non-uniform manner.

The Nimerichters next argued the subject parcels are misclassified under section 441.37(1)(a)(1)(c), stating the subject parcels are non-cropland not cropland acres. However, the classifications of real property in Iowa include agricultural, residential, multiresidential, commercial, and industrial. Here, we find the subject parcels are correctly classed agricultural land.

They also argued the subject parcels are over assessed and that there is fraud in their assessments under sections 441.37(1)(a)(1)(b & e). They assert the value of Wayne County land does not compare with land in Central and Northern Iowa that is conducive to growing row crops because it is flush with top soil. The subject parcels only have about an inch of top soil at best. They also believe the soil maps are not an accurate reflection of what exists.

Iowa Code section 441.21(1)(e) requires agricultural property be assessed by giving exclusive consideration to its productivity and net earning capacity. Any formula or method employed to determine productivity and net earning capacity shall be adopted in full by rule. *Id.* The formula or method for determining aggregate value of

agricultural real estate (also known as the “ag productivity formula”) is set forth in Rule 701-71.12(1).

The 2008 IOWA DEPARTMENT OF REVENUE REAL PROPERTY APPRAISAL MANUAL provides that land precluded from producing a crop shall be defined as non-cropland. Further, the MANUAL lists seven non-cropland circumstances, which include:

1. Building sites including driveways or access roads.
2. Non crossable streams or waterways.
3. Forest or timber ground.
4. Dedicated ponds or dam area (not occasional ponding in field).
5. Permanent pasture.
6. Land under permanent easement that precludes any type of crop production.
7. Land with access limitations or limited ability to be cropped.

MANUAL 2-27.

In 2013 IDR amended rule 701-71.3(1) “to address the lack of uniformity in the distribution of agricultural productivity value at a parcel level across the state of Iowa.” IAB Vol. XXXV, No. 24 (5/29/13) p. 1897, ARC 0770C. Implementation of these changes was to occur by 2017. R. 701-71.3(1). Pursuant to the rule, assessors are now to make specified adjustments on non-cropland.

The adjustment shall be applied to non-cropland with a corn suitability rating (CSR) that is greater than 50 percent of the average CSR for cropland for the county. The adjustment shall be determined for each county based on the five year average difference in cash rent between non-irrigated cropland and pasture land as published by NASS. In extreme or unusual cases, other adjustments may be necessary on a per parcel basis.

*Id.*

Effectively, the amendment removed non-uniform adjustments being made by assessors across the State.

The Nimerichters operate a cattle ranch and use the land solely to pasture their livestock. It is clear they have been good stewards of the land by not tilling soils on steep slopes that are unsuitable for row cropping. While the County Assessor believes IDR directs assessors to consider steep hills crop able, he acknowledged he would never plow the Nimerichters’ land. Further, compelling testimony was given regarding IDR Property Tax Administrator’s exclamation when she toured their farm, concurring

with the argument that the subject parcels should not be cropped. It is also undisputed that for the past twenty-seven years, the entirety of their land has been held in pasture.


MANUAL 2-27 specifically lists permanent pasture as a circumstance in which land is to be designated non-cropland. Although we cannot find further guidance for determining what constitutes permanent pasture, we note the definition of permanent is “intended to exist or function for a long, indefinite period without regard to unforeseeable conditions.” See <http://www.dictionary.com/browse/permanent> (last visited May 7, 2018). The record before us indicates, the subject parcels have been pastureland for, at the very least, the prior twenty-seven years that the Nimerichters’ have owned the property. Testimony also supports the conclusion that this use of the property will continue into the future. Therefore, we find it reasonable to conclude the subject parcels are permanent pasture. For this reason, we find the Assessor erred by designating the subject parcels’ as cropland rather than non-crop land and not making the appropriate adjustments where necessary.

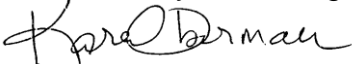
Viewing the record as a whole, we find errors in the subject parcels’ assessed values, as their permanent pasture should have been designated non-cropland instead of cropland.

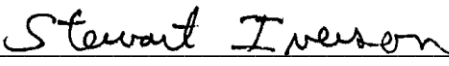
### **Order**

PAAB HEREBY MODIFIES the Wayne County Board of Review’s action and orders the subject parcels’ permanent pasture land be changed from cropland to non-cropland.

PAAB FURTHER ORDERS the Assessor recalculate the January 1, 2017 assessed values of the newly designated non-cropland acres by applying the required adjustments. The modified assessed values shall subsequently be submitted to PAAB for final approval.

  
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Camille Valley, Presiding Officer

  
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Karen Oberman, Board Member

  
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Stewart Iverson, Board Chair

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Wayne County Board of Review by eFile